

N.D.A.G. Letter to Meier (July 31, 1986)

July 31, 1986

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of June 30, 1986, inquiring as to whether the sale of insurance may be accomplished through a professional corporation.

While a corporation is considered a person for many purposes, it is recognized that a business corporation cannot be licensed to practice a learned profession which can only be practiced by persons who have received a license to do so after an examination as to their knowledge of the subject. As a general rule, a business corporation cannot lawfully engage in the practice of law and medicine. 18b Am. Jur.2d Corporations §2120 (1985).

Traditionally, incorporation has not been permitted for the practice of the learned professions primarily for the reasons that the skills are personal and their relationship is confidential. Model Business Corp. Act §3 (1971). However, there is a current movement toward authorizing incorporation of professional persons, primarily to obtain benefits that are allowed only to corporations under the revenue acts. North Dakota Professional Corporations, 46 N.D.L.R. 433 (1970).

States such as North Dakota permit persons engaged in various professions to form professional corporations or associations for the practice of their professions, and this form of organization is now frequently utilized by accountants, attorneys, and doctors. Whether a corporation may be licensed to practice a profession depends on the particular licensing statute. 18b Am. Jur.2d Corporations §2120 (1985).

North Dakota professional corporations are governed by the provisions of N.D.C.C. Ch. 10-31. The pertinent provisions of N.D.C.C. Ch. 10-31 are as follows:

10-31-01. DEFINITIONS. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Professional corporation" means a corporation which is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to

render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.

2. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation.

(Emphasis supplied.)

10-31-04. PURPOSE FOR WHICH INCORPORATED. A professional corporation may be organized pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service for which it was organized to render; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate mortgages, stocks, bonds and any other type of investment. . . .

(Emphasis supplied.)

Therefore, in order to be qualified to incorporate as a professional corporation, the following two requirements must be met:

1. The personal service rendered to the public must require a license;
2. The rendering of such a personal service could not be performed by a corporation prior to the passage of N.D.C.C. Ch. 10-31.

Clearly, the first requirement is met in that the sale of insurance by persons requires a license. See N.D.C.C. Ch. 26.1-26.

Turning to the second professional incorporation requirement, the professional corporation provisions of N.D.C.C. Ch. 10-31 came into existence on July 1, 1963. See 1963 N.D. Sess. Laws 106. Prior to July 1, 1963, the North Dakota Business Corporation Act had undergone a major revision in 1957. The state adopted the then-existing Model Business Corp. Act. See 1957 N.D. Sess. Laws 102 and Report of the North Dakota Legislative Research Committee, 35 Legislative Assembly, at 13 (1957). After examining both the then-existing Business Corporation Act and your corporate files, it is clear that the sale of insurance by business corporations was permitted prior to July 1, 1963. See, e.g., First American Insurance Agency of Carrington (incorporated in 1960 as Foster County Insurance Agency, Inc.). Clearly, the second professional incorporation requirement cannot be met since the sale of insurance by business corporations was permitted prior to the adoption of the Professional Corporation Act.

Therefore, it is my opinion that a professional corporation may not be organized for the sale of insurance.

Sincerely,

Nicholas J. Spaeth

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